

Arguments/Remarks

Claims 21-24 and 26-38 are pending in the patent application. Claims 22 and 23 were previously withdrawn as being drawn to matter subject to a restriction requirement and Applicants requested rejoinder upon allowance of the compound claims upon which they depended.

Examiner has additionally withdrawn Claims 24, 26 and 30-38 as being drawn to non-elected species which are subject to rejoinder based on further Markush examination.

Applicants have cancelled Claims 31-36 without prejudice and without admission of obviousness or anticipation to assist in the movement of the application to allowance. In addition, Applicants have amended Claim 27 to remove references to those compounds where D is N(Rh), -O-, S, S(O), or S(O)₂. Applicants reserve the right to file a continuation application directed to the cancelled subject matter.

Applicants also amended Claims 24 and 26 to remove those compounds that no longer fall within the scope of the broadest claim (Claim 27).

Claims 27 and 29 as well as withdrawn claim 37 were amended to make is clear that the heteroaryl moieties listed refer to "het" and not to phenyl. In addition, the claims were amended to correct a formatting error of the substituents R₆' and R₇'.

Applicants would like to thank the Examiner for the telephone interview on February 18, 2011.

Statement of the Substance of the Interview

Applicants conducted a phone interview with the Examiner on February 18, 2011 to discuss the following issues: (i) 102(b) rejection based on Sharma, et al.; (ii) priority claim; and (iii) continuation of the Markush search. With respect to the 102(b) rejection, Applicants explained to the Examiner that in accordance with standard nomenclature "substituted aryl or het" did not allow for attachment through the substituent, but instead attached only to the aryl or het group. Examiner requested proof of such interpretation, which will be discussed below. In addition, Applicant agreed to add language to the claim to make it clear that the substituted aryl or het was attached to the aryl or het, respectively, and not to the optional substituent. The support for such additional language is discussed below. It should be noted that the language was added for clarification purposes only; therefore, it does not add any new matter.

With respect to the priority claim, Applicants briefly discussed the Examiner's rationale for rejecting the priority claim. The priority claim was rejected for Claim 27 as

discussed in the office action (prior to the current amendment). No further discussion was necessary.

Applicants briefly discussed the next steps in the examination process. Examiner explained that if he agreed with the Applicants' amendments to remove the Sharma reference by making it clear that the Ar1-D-Ar2 moiety is attached through the aryl or het group and not through the optional substituent, then he would continue the search as outlined in the MPEP for Markush examinations.

Claim Objections

The Examiner objected to the use "O" instead of "0" in Claim 27 for the definition of n. Claim 27 (as well as the withdrawn claims) has been amended to correct the obvious error.

Objections to the Specification

The Examiner objected to the specification for failure to identify Table 1 which is referred to in the specification on page 114. Applicants have amended the specification to insert the phrase "Table 1" at the top of the table in the specification on page 70. This is clearly an obvious error and does not add any new matter.

The Examiner also objected to the specification for failure to include the sequence listing and identification of the peptide AVPFAQK disclosed on page 114. Applicants have amended the specification by adding the formal sequence listing after the abstract and amended the paragraph on page 114 to provide the proper reference to the sequence listing.

Priority Claims

Examiner asserts that "In the instant case, none of the claims under examination are fully supported by the provisional Application No. 60/560,186." Therefore, none of the claims under examination receive the benefit of the provisional application. Applicants respectfully disagree. The Examiner is basing his assertion solely on Claim 27 and ignoring the other claims under examination. In particular, Claims 29, 30, 37 and 38 do not contain compounds where D is N(Rh), S(O) or S(O)₂. No explanation was provided to explain why these claims (in particular, Claim 29 which was under examination) would not receive the benefit of the prior application 60/560,186. Applicants would like to draw the Examiner's attention to pages 5, 13-14, 15-16, and 18 of the specification. Compounds where D is – C(O)- or C₁₋₇ alkyl which may be unsubstituted or substituted with one or more halogens is disclosed in each of these locations. In fact, Examiner acknowledged that D being C(O) is

supported on page 5. Support for the other substituents can be found throughout the description of the preferred embodiments (pages 11-21). Applicants respectfully submit that the amended Claim 27 and the remaining claims are clearly supported in the priority document as discussed above.

§102 Rejections

I. Claims 21, 27-29 were rejected under 35 USC§102(b) as being anticipated by Sharma, et al (WO 2004/005248).

Examiner asserts that Example 16 of Sharma anticipates Claim 27 and the dependents thereon. Applicants respectfully disagree. Examiner correctly identifies that Ar₁ can be a substituted phenyl; however, Examiner goes on to assert that the point of linkage of Ar₁ to the pyrrolidinyl ring (when n = 0) can be by means of the substituent. Applicants respectfully disagree with the Examiner's interpretation of substituted phenyl. For clarity purposes, Applicants have added language to Claims 27 and 29 (as well as the withdrawn claims) which states that the phenyl or the het of Ar₁ is attached to both (Rb)_n and D, and the phenyl or the het of Ar₂ is attached to both D and R⁵. Support for introduction of the added language can be found in the numerous exemplified compounds listed in both the specification and claims having such orientation. Applicants respectfully submit that no new matter was added by the added language and that the language was added simply for clarification purposes only.

Applicants maintain that the Examiner's interpretation of substituted phenyl is unreasonable and contrary to common nomenclature and searching strategies. It is well established that "[t]he ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application." *Phillips v. AWH Corp.*, 75 USPQ2d 1321, 326 (Fed. Cir. 2005) "The inquiry into how a person of ordinary skill in the art understands a claim term provides an objective baseline from which to begin claim interpretation ... Importantly, the person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent including the specification." *Phillips*, 75 USPQ2d at 1326.

If Applicants intended to claim compounds having an amide attached to the pyrrolidinyl ring as cited, then Ar₁ would have to be an amide substituted with an aryl or het. In addition, there would be no need to add (Rb)_n between the pyrrolidinyl ring and Ar₁. Clearly, this is not the situation especially in light of the numerous compounds disclosed where the aryl or heteroaryl group is directly attached to the pyrrolidinyl ring.

Applicant would also like to draw the Examiner's attention to the USPTO's compound classification system, which treats "aryl/substituted aryl" as distinct from "aryl connected through alkyl". See, e.g., the definition of Benzene Ring in the Section IV Glossary of Classification 532. Therefore, the Examiner's position is unreasonable in view the different status of the concepts in the art according to the USPTO's own standards.

Applicants respectfully submit that the Sharma compound is not anticipatory; therefore, the rejection should be withdrawn.

Should the Examiner have any questions, please contact the undersigned attorney.

Respectfully submitted,

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Date: 15 March 2011